GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Commercial Taxes Department – Old arrears – M/s.Modern Proteins Limited, Kurnool – W.P. before High Court of Rajasthan against the order of Debt Recovery Appellate Tribunal – Permission to engage the services of Mr.Pankaj Ghiya, Advocate and Administrative Sanction for payment of fees – Accorded – Orders – Issued.

REVENUE (COMMERCIAL TAXES-II) DEPARTMENT

G.O.Rt.No.607. Dated:02-06-2016.

Read the following:

(1) From the Deputy Commissioner (CT), Kurnool, Letter Rc.No.131/C3/2015, Dt.28-04-2015.
(2) Letter from the CTO-III, Kurnool in Rc.No.A5/55/95, Dt.26-06-2015.
(3) CCT's Letter Ref.No.L1/(2)/591/2015-II, Dt.07-09-2015.
(4) Letter from the CTO-III, Kurnool in Rc.No.A5/55/95, Dt.26-09-2015.
(5) From the CCT, AP, Hyd., Lr.Ref.No.L1(2)/598/2015, Dt:21-10-2015.
(6) Govt.Memo.No.20402/CT-II(2)/2015-2, Dated:18-11-2015 & 26-04-2016.

** ** **

ORDER:

In the reference 5th read above, the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad has stated that M/s.Modern Proteins Limited, Kurnool is in arrears of tax of Rs.35,79,078/- for the tax periods 1990-91 to 2000-2001. Having had the information that the Bank of Rajasthan presently called ICICI Bank filed an application before the Debt Recovery Tribunal (DRT), Rajasthan for recovery of it's Loan from the above dealer, and that the DRT issued a recovery certificate on 11-11-2002 against the dealer and that due to non-payment of decreed amount, the Bank filed execution petition and that the properties of the dealer were auctioned for a sum of Rs.3.26 Crs and the sale proceeds were deposited with the recovery officer and subsequently handed over to the Bank on 23-07-2004, the Commercial Tax Officer, Kurnool-III Circle approached the Recovery Officer, Debt Recovery Tribunal, Jaipur by way of filing an application for recovery of tax dues on the ground that the tax dues of the State have priority charge on the properties of the dealer. But the Recovery Officer, Debt Recovery Tribunal, Jaipur dismissed the claim of the Department stating that the claim application is subsequent to the confirmation and execution of the Recovery Certificate. Aggrieved by the above orders of the Recovery Officer, Debt Recovery Tribunal, Jaipur, the Department filed an appeal before Debt Recovery Tribunal, Jaipur, which allowed the appeal vide its orders, Dated:16-04-2009 in favour of the Department, with a direction to the Recovery Officer, Debt Recovery Tribunal, Jaipur to recover the amount from the Bank out of the sale proceeds already handed over to the Bank and make payment of tax dues to the Department. The Bank Authorities filed an appeal before Debt Recovery Appellate Tribunal (DRAT), New Delhi against the orders of the Debt Recovery Tribunal, Jaipur. The DRAT, New Delhi allowed the appeal vide its orders, dated:06-08-2014 in favour of the Bank Authorities observing that the Department has not shown any charge over the mortgaged property to claim priority and that the claim is against the dealer and it cannot be realized from the Bank and quashed the orders, dated:16-04-2009 of the DRT, Jaipur.

2. The Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad has also stated that Section 16-C of the APGST Act, 1957 being non-obstante clause, creates first charge on the property of the dealer/person to the Department for the tax dues or any other sum payable by the dealer and further the above orders Dt.06-08-2014 of the DRAT, New Delhi are in contrary to the Judgement of the Hon'ble Supreme Court of India in the case of Central Bank of India Vs. State of Kerala and others reported in (2009) 4 SCC 94, wherein the Hon'ble Supreme Court of India held that the Parliament did not intend to give priority to the dues of the private creditors over Sovereign debt of the State and in the absence of any specific provisions of that effect, it is not possible to read any conflict or inconsistency or overlapping between the provisions of the DRT Act and Securitization Act on the one hand and Section 38-C of the Bombay Sales Tax Act and Section 26-C of the Kerala General Sales Tax Act on the other hand and the non-obstante clauses in Section 34(1) of the DRT Act and Section 35 of the Securitization Act cannot be invoked for declaring that the first charge created under a State Legislation would not affect the proceedings initiated by Banks, Financial Institutions, other secured creditors for recovery of their dues.

P.T.O.,

3. The Commissioner of Commercial Taxes, A.P., Hyderabad has opined that it is a fit case to contest before the Hon'ble High Court of Rajasthan against the orders Dt.06-08-2014, for recovery of tax dues of Rs.35,79,078/- from the dealer. In this regard, the Commercial Tax Officer, Kurnool-III Circle contacted one Advocate, namely, Sri Pankaj Ghiya, practicing in High Court of Rajasthan, for filling Writ Petition and to defend our case till the conclusion of Writ Petition in this issue before the Hon'ble High Court of Rajasthan. The above Advocate accepted to enter appear and to defend our case and to receive Rs.1,00,000/- (One lakh Rupees only) towards his charges till the conclusion of the entire proceedings. The Commissioner of Commercial Taxes, A.P., Hyderabad has finally requested the Government to grant permission for engaging the services of the above Advocate in this regard and to accord administrative sanction for payment of fees of Rs.1,00,000/- claimed by the above Advocate in two or three installments.

4. Government, after careful examination of the matter, hereby accord - (1) permission to the Commissioner of Commercial Taxes, A.P., Hyderabad for engaging the services of Mr. Pankaj Ghiya, Advocate, High Court of Rajasthan, who formally accepted to appear and argue for the State of A.P., before the Rajasthan High Court against the orders Dt.06-08-2014 of the Debt Recovery Appellate Tribunal, New Delhi, for recovery of tax dues of Rs.35,79,078/- for the tax periods 1990-91 to 2000-2001 from the dealer i.e., M/s. Modern Proteins Ltd., Kurnool; **and** (2) administrative sanction to the Commissioner of Commercial Taxes, A.P., Hyderabad for payment of fees of Rs.1,00,000/- (Rupees One Lakh only) claimed by the above Advocate in two or three installments .. subject to meeting the above fee expenditure from the available Budget Estimates in CCT's Office under the Head of Legal Fees, i.e., Head 280-281.

5. The Commissioner of Commercial Taxes, A.P., Hyderabad shall take necessary action accordingly.

6. This order issues with the concurrence of Finance (FMU-Rev.& IC) Department.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

AJEYA KALLAM
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To
The Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad.
Copy to:
The Pay and Accounts Officer, Andhra Pradesh, Hyderabad.
The Accountant General, Andhra Pradesh, Hyderabad.
The Finance (FMU-Rev. & IC) Department.
Sf/Sc.

//FORWARDED::BY ORDER//

SECTION OFFICER